

HOUSE No. 1850

The Commonwealth of Massachusetts

PRESENTED BY:

Byron Rushing, Christine E. Canavan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act making discrimination on the basis of weight and height unlawful.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Pam Richardson	6th Middlesex
Matthew C. Patrick	3rd Barnstable
Martha M. Walz	8th Suffolk
Benjamin Swan	11th Hampden
Steven J. D'Amico	4th Bristol
Carl M. Sciortino, Jr.	34th Middlesex
Willie Mae Allen	6th Suffolk
Timothy J. Toomey, Jr.	26th Middlesex
John W. Scibak	2nd Hampshire
Susan C. Fargo	Third Middlesex
Kathi-Anne Reinstein	16th Suffolk
Ellen Story	3rd Hampshire
Karen E. Spilka	Second Middlesex and Norfolk
Kay Khan	11th Middlesex
Gloria L. Fox	7th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1844 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT MAKING DISCRIMINATION ON THE BASIS OF WEIGHT AND HEIGHT UNLAWFUL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of said chapter 151B is hereby amended by striking out
2 subsection 1, as appearing in the 1990 Official Edition, and inserting in place thereof the
3 following subsection:—

4 1. For an employer, by himself or his agent, because of the race, color, religious creed, national
5 origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual
6 orientation involves minor children as the sex object, or ancestry of any individual to refuse to
7 hire or employ or to bar or to discharge from employment such individual or to discriminate
8 against such individual in compensation or in terms, conditions or privileges of employment,
9 unless based upon a bona fide occupational qualification.

10 SECTION 2. Said section 4 of said chapter 151B is hereby further amended by striking out
11 subsection 2, as so appearing, and inserting in place thereof the following subsection:—

12 2. For a labor organization, because of the race, color, religious creed, national origin, sex,
13 height, weight, sexual orientation which shall not include persons whose sexual orientation
14 involves minor children as the sex object, age, or ancestry of any individual, or because of the
15 handicap of any person alleging to be a qualified handicapped person, to exclude from full
16 membership rights or to expel from its membership such individual or to discriminate in any way
17 against any of its members or against any employer or any individual employed by an employer
18 unless based upon a bona fide occupational qualification.

19 SECTION 3. Said section 4 of said chapter 151B is hereby further amended by striking out
20 subsection 3, as so appearing, and inserting in place thereof the following subsection:—

21 3. For any employer or employment agency to print or circulate or cause to be printed or
22 circulated any statement, advertisement or publication, or to use any form of application for
23 employment or to make any inquiry or record in connection with employment, which expresses,
24 directly or indirectly, any limitation, specification or discrimination as to the race, color,
25 religious creed, national origin, sex, height, weight, sexual orientation, which shall not include
26 persons whose sexual orientation involves minor children as the sex object, age or ancestry, or
27 the handicap of a qualified handicapped person or any intent to make any such limitation,
28 specification or discrimination, or to discriminate in any way on the ground of race, color,
29 religious creed, national origin, sex, sexual orientation, age, ancestry or the handicap of a
30 qualified handicapped person, unless based upon a bona fide occupational qualification.

31 SECTION 4. Said section 4 of said chapter 151B is hereby further amended by striking out
32 subsection 3A, as so appearing, and inserting in place thereof the following subsection:—

33 3A. For any person engaged in the insurance or bonding business, or his agent, to make any
34 inquiry or record of any person seeking a bond or surety bond conditioned upon faithful
35 performance of his duties or to use any form of application in connection with the furnishing of
36 such bond, which seeks information relative to the race, color, religious creed, national origin,
37 sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation
38 involves minor children as the sex object, or ancestry of the person to be bonded.

39 SECTION 5. Said section 4 of said chapter 151B is hereby further amended by striking out
40 subsection 6, as so appearing, and inserting in place thereof the following subsection:—

41 6. For the owner, lessee, sub lessee, licensed real estate broker, assignee or managing agent of
42 publicly assisted or multiple dwelling or contiguously located housing accommodations or other
43 person having the right of ownership or possession or right to rent or lease, or sell or negotiate
44 for the sale of such accommodations, or any agent or employee of such a person, or any
45 organization of unit owners in a condominium or housing cooperative: (a) to refuse to rent or
46 lease or sell or negotiate for sale or otherwise to deny or withhold from any person or group of
47 persons such accommodations because of the race, religious creed, color, national origin, sex,
48 height, weight, sexual orientation, which shall not include persons whose sexual orientation
49 involves minor children as the sex object, age, ancestry, or marital status of such person or
50 persons or because such person is a veteran or member of the armed forces, or because such
51 person is blind, or hearing impaired; (b) to discriminate against any person because of his race,
52 religious creed, color, national origin, sex, height, weight, sexual orientation, which shall not
53 include persons whose sexual orientation involves minor children as the sex object, age,
54 ancestry, or marital status or because such person is a veteran or member of the armed forces, or
55 because such person is blind, or hearing impaired, in the terms, conditions or privileges of such
56 accommodations or the acquisitions thereof, or in the furnishings of facilities and services in
57 connection therewith, or because such a person possesses a trained dog guide as a consequence

of blindness, or hearing impairment; (c) to cause to be made any written or oral inquiry or record concerning the race, religious creed, color, national origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, ancestry or marital status of the person seeking to rent or lease or buy any such accommodation, or concerning the fact that such person is a veteran or a member of the armed forces or because such person is blind or hearing impaired. The word “age” as used in this subsection shall not apply to persons who are minors nor to residency in state aided or federally aided housing developments for the elderly nor to residency in retirement communities consisting of either a structure or structures constructed expressly for use by the elderly on one parcel or on contiguous parcels of land, totaling at least ten acres in size, which communities have a minimum age requirement for residency of at least fifty-five years; provided, however, that no more than one of the persons occupying any unit may be under fifty five years of age, exclusive of nurses or other person providing health care services to the elderly occupants of said unit.

SECTION 6. Said section 4 of said chapter 151B is hereby further amended by striking out subsection 7, as so appearing, and inserting in place thereof the following subsection:—

7. For the owner, lessee, sub lessee, real estate broker, assignee, or managing agent or other covered housing accommodations or of land intended for the erection of any housing accommodation included under subsection 10, 11, 12, or 13 of section one, or other person having the right of ownership or possession or right to rent or lease or sell, or negotiate for the sale or lease of such land or accommodations, or any agent or employee of such a person or any organization of unit owners in a condominium or housing cooperative: (a) to refuse to rent or lease or sell or negotiate for sale or lease or otherwise to deny or withhold from any person or group of persons such accommodations or land because of race, color, religious creed, national origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, ancestry, or marital status, veteran status or membership in the armed forces, blindness, hearing impairment, or because such person possesses a trained dog guide as a consequence of blindness or hearing impairment of such person or persons; (b) to discriminate against any person because of his race, color, religious creed, national origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, ancestry, or marital status, veteran status or membership in the armed services, blindness, or hearing impairment, or because such person possesses a trained dog guide as a consequence of blindness or hearing impairment in the terms, conditions or privileges of such accommodations or land of the acquisition thereof, or in the furnishing of facilities and services in the connection therewith, or (c) to cause to be made any written or oral inquiry or record concerning the race, color, religious creed, national origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, ancestry, marital status, veteran status or membership in the armed services, blindness, hearing impairment or because

such person possesses a trained dog guide as a consequence of blindness or hearing impairment, of the person seeking to rent or lease or buy any such accommodation or land; provided, however, that this subsection shall not apply to the leasing of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as his residence. The word “age” as used in this subsection shall not apply to persons who are minors, nor to residency in state-aided or federally-aided housing developments for the elderly nor to residency in retirement communities consisting of either a structure or structures constructed expressly for use by the elderly on one parcel or on contiguous parcels of land, totaling at least ten acres in size, which communities have a minimum age requirement for residency of at least fifty-five years; provided, however, that no more than one of the persons occupying any unit may be under fifty-five years of age, exclusive of nurses or other person providing health care services to the elderly occupants of said unit.

SECTION 7. Said section 4 of said chapter 151B, as so appearing, is hereby further amended by striking out subsection 8 and inserting in place thereof the following subsection:— 8. For the owner, lessee, sub lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, commercial space: (1) To refuse to sell, rent, lease or otherwise to deny or withhold from any person or group of persons such commercial space because of race, color, religious creed, national origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, ancestry or marital status of such person or persons. (2) To discriminate against any person because of his race, color, religious creed, national origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, ancestry or marital status in the terms, conditions or privileges of the sale, rental or lease of any such commercial space or in the furnishing of facilities or services in connection therewith. (3) To cause to be made any written or oral inquiry or record concerning the race, color, religious creed, national origin, sex, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, ancestry or marital status of a person seeking to rent or lease or buy any such commercial space. The word “age” as used in this subsection shall not apply to persons who are minors, nor to residency in state-aided or federally-aided housing developments for the elderly nor to residency in self-contained retirement communities constructed expressly for use by the elderly and which are at least twenty acres in size and have a minimum age requirement for residency of at least fifty-five years.

SECTION 8. Said section 4 of said chapter 151B, as so appearing, is hereby further amended by striking out the last paragraph and inserting in place thereof the following paragraph:—

Nothing contained in this chapter or any rule or regulation issued by the commission shall be interpreted as requiring any employer, employment agency or labor organization to grant preferential treatment to any individual or to any group because of the race, color, religious

creed, national origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age or ancestry of such individual or group because of imbalance which may exist between the total number or percentage of persons employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization or admitted to or employed in, any apprenticeship or other training program, and the total number or percentage of persons of such race, color, religious creed, national origin, sex, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age or ancestry in the commonwealth or in any community, section or other area therein, or in the available work force in the commonwealth or in any of its political subdivisions.

SECTION 9. Section 92A of chapter 272 of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

No owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement shall, directly or indirectly, by himself or another, publish, issue, circulate, distribute or display, or cause to be published, issued, circulated, distributed or displayed, in any way, any advertisement, circular, folder, book, pamphlet, written or painted or printed notice or sign, of any kind or description, intended to discriminate against or actually discriminating against persons of any religious sect, creed, class, race, color, denomination, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, nationality, or because of deafness or blindness, or any physical or mental disability, in the full enjoyment of the accommodations, advantages, facilities or privileges offered to the general public by such places of public accommodation, resort or amusement.

SECTION 10. Said chapter 272 is hereby further amended by striking out section 98, as so appearing, and inserting in place thereof the following section:—

Section 98. Whoever makes any distinction, discrimination or restriction on account of race, color, religious creed, national origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, deafness, blindness or any physical or mental disability or ancestry relative to the admission of any person to, or his treatment in any place of public accommodation, resort or amusement, as defined in section ninety-two A, or whoever aids or incites such distinction, discrimination or restriction, shall be punished by a fine of not more than twenty-five hundred dollars or by imprisonment for not more than one year, or both, and shall be liable to any person aggrieved thereby for such damages as are enumerated in section five of chapter one hundred and fifty-one B; provided, however, that such civil forfeiture shall be of an amount not less than three hundred dollars; but

172 such person so aggrieved shall not recover against more than one person by reason of any one act
173 of distinction, discrimination or restriction. All persons shall have the right to the full and equal
174 accommodations, advantages, facilities and privileges of any place of public accommodation,
175 resort or amusement subject only to the conditions and limitations established by law and
176 applicable to all persons. This right is recognized and declared to be a civil right.